

REMARKS

Applicant's attorney acknowledges with appreciation the courtesy extended to him during the telephonic interview of the subject application on December 11, 2003. During the interview, all claims and all cited references were discussed. No agreement was reached concerning allowance of the claims.

Various claims were rejected under 35 U.S.C. 112. The rejected claims have been amended to provide the proper antecedent basis. Therefore, this rejection has been overcome.

Claims 1, 3, 11, 12 and 16 stand rejected under 35 U.S.C. 102(b) as being anticipated by Flum '796. These claims have been amended to overcome this rejection. For an anticipation rejection to be proper, each and every element in the claim must be found in the cited reference. As amended, the rejected claims now require that there be rack subassemblies with the subassemblies each having shelf members attached to upright support members comprised in the rack subassemblies. Such a structure cannot be found in the Flum reference. Firstly, the Flum reference does not disclose rack subassemblies. Because this element is missing from the Flum reference on this basis alone, the anticipation rejection is inappropriate. Further, there is no disclosure of shelves being secured to the upright supports as now required in the rejected claims and thus for this reason alone the anticipation rejection is inappropriate. Thus, the anticipation rejection has been overcome. It is respectfully requested that this rejection be reconsidered and withdrawn.

The remaining claims have been variously rejected under 35 U.S.C. 103(a). References cited include Flum '796, Battaglia et al. '307, Lee '170 and Bustos '191.

A brief discussion of each of the cited references is provided. Flum discloses a gravity feed display system in several forms. The form utilized as the basis for the rejections is embodied in Figs. 20-25. This rack system includes a front framework comprised of an upper U

shaped member and lower legs with forwardly projecting feet. It also includes a back comprising a generally U shaped frame attached to lower legs with rearwardly projecting feet. The two frameworks are joined together by connectors 144. The frames are joined together at approximately their mid point by stakes in pockets. The frame components have shelf supports secured and extending between opposite uprights. No shelves are attached to this system but rather are laid on the shelf supports and supported thereby. There is no disclosure in this reference of rack subassemblies which come assembled including attached shelves whereby store workers can simply remove the subassemblies from a box and stack one on the other. In fact, it appears that this structure is intended to be shipped in separate parts and assembled at a store, the type of structure which the present invention was designed to be an improvement over.

Battaglia, shows a header structure which is not connectable to subassemblies but rather is directly connected to the shelf support framework. The header is mounted on an X frame which is mounted to the top of the shelf support framework. See Fig. 6 for example. Bustos discloses a refrigerated merchandiser having side mounted shelves. Lee discloses a gravity feed shelf which has an upper shelf member 30 (organizer). The shelf member 30 guides products and retains product in itself by the use of a transverse bar 34. There is no disclosure of a narrow width portion forming a "gate" to retain product within each of the channels of the shelf member. It appears that the shelf 30 is held in place to product support by the transverse bar 36 being received in a holder at the left hand end of the product support as seen in Fig. 6 and in Fig. 8.

The rejections of claims 7, 8 and 13 do not address the dimensioning of the organizer at its dispensing end. It is requested that the final nature of the last Office Action be withdrawn and that these limitations be considered and addressed. It is submitted that, as presented, the Final Office Action is premature since all limitations in the claims have not been discussed.

Applicants respectfully request the opportunity to have these limitations evaluated by the Patent

Office. It is also submitted that these limitations should make the claims patentable over the cited references.

With regard to claim 2, because it depends from what is believed to be an allowable claim, it is also allowable.

With regard to claim 3, because it depends from claim 1 which has limitations not contained in Flum, it is not the proper subject of an anticipation rejection. It is submitted that because claim 1 is allowable, as discussed herein, claim 3 is also allowable.

Claims 4 and 6 stand rejected under 35 U.S.C. 103(a) over Flum in view of Battaglia et al. Claim 4 requires that the header assembly have a plurality of connector members that are engageable with at least some of the second upright support members. It is noted that in Battaglia, the header is mounted to the uprights indirectly via connections through an X brace being connected to cross members between the uprights. It is thus submitted that there is no disclosure in Battaglia of the particular structure defined in claim 4. Thus, its rejection is inappropriate and it is respectfully requested that it be reconsidered and withdrawn. Claim 6 depends from claim 4 providing further detail of the header assembly and because claim 4 is allowable it is submitted that claim 6 is also allowable.

Claims 5 and 17 stand rejected under 35 U.S.C. 103(a) over Flum in view of Battaglia. The arguments advanced about the allowability of claims 4 and 6 apply equally to claim 5. With regard to claim 17, because it depends from an allowable claim, it is submitted that claim 17 is also allowable.

Claims 7, 8 and 13 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Flum in view of Lee. As discussed above, Lee does not contain limitations expressed in these claims. Further, Lee does not suggest a structure as defined in claims 7, 8 and 13. Therefore,

Flum in view of Lee will not support a 35 U.S.C. 103(a) rejection of these claims. It is respectfully requested that the rejection of these claims be reconsidered and withdrawn.

Claims 9, 10, 14 and 15 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Flum in view of Bustos. Because these claims depend from allowable claims it is submitted that these claims are also in a condition for allowance. Reconsideration and withdrawal of this rejection is respectfully requested.

Claims 18-20 and 23-25 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Flum in view of Battaglia, Lee and Bustos. Independent claim 18 contains limitations similar to those found in claims 1 and 12. Nothing in the combination of references suggest the multi subassemblies with attached shelves. For this reason, and for the reason advanced above with regard to the patentability of claims 1 and 12, it is submitted that claim 18 is also in a condition for allowance. Thus, claim 18 is patentable over the cited references. Because claims 19-20 and 23-25 depend from claim 18 they are also allowable. Further, although claim 25 has been rejected, there is no discussion about any of the references having the defined brace member. Thus, it is respectfully requested that the limitations in this claim be addressed relative to the cited art. In fact, no such structure can be found in the cited references. Reconsideration and withdrawal of the rejection of claim 25 is respectfully solicited.

New claims 26-31 have been provided. They provide additional structure regarding the organizer and how the organizer attaches to a rack member through cooperative latch devices. It is requested that these claims be considered by the Patent Office. None of the cited references teaches the defined structure.

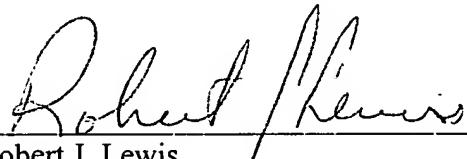
Because of the limitations now contained in all the independent claims, it is submitted that these claims distinguish over the various suggested combinations of references cited in support of the rejections. For this reason it is submitted that the claims are patentable.

It is submitted that the claims as amended are in a condition for allowance which is respectfully solicited. If any issues regarding the allowability of any of the pending claims in the present application could be readily resolved or action could be taken to further advance this application, such as an Examiner's amendment, or if the Examiner should have any questions regarding this response it is respectfully requested that the Examiner please telephone Applicant's undersigned attorney in this regard.

Respectfully submitted

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